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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,939	12/27/2005	Tomohiro Ito	450100-04780	2370

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EXAMINER
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LE, HUYEN D

ART UNIT	PAPER NUMBER
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2615

MAIL DATE	DELIVERY MODE
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09/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,939	<b>Applicant(s)</b> ITO ET AL.	
	<b>Examiner</b> HUYEN D. LE	<b>Art Unit</b> 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-5,7,9,11,13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 2,3,5,7,9,11,13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 16-19 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892).                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 16-19 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The original claims do not claim the left and right ear-hook portions that are attached to the left and right drivers units, respectively as now claimed in claim 16.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-19 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

2. Regarding claim 13, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 2, 3, 5, 7, 9, 11 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Ito et al. (U.S. patent 6,868,164).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 2 and 11, Ito et al. teaches a headphone comprising left and right driver units (10, 20, 110, 120) that are connected by a cord (30, 51, 52, 131, 133, 170) passed behind a neck (16A, 16B, 16C). The headphone of Ito comprises a belt shaped strap portion (30, 131) in which the middle part of the cord (51, 52, 133, 170) is inserted into a cylindrical belt, and end members (12, 12a, 14, 140, 150, 200) that fix the cord and the cylindrical belt (figures 4, 7, 9, 12). As shown in figures 4, 7, 9 and 12, each end member include separate upper and lower members (the connecting member or the band connector, and the cover member).

Regarding claim 3, Ito shows the end members that includes the protrusions as claimed (figures 4, 7, 9, 12).

Regarding claim 5, Ito shows a tube and the cylindrical belt as claimed (figures 4, 7, 9, 12).

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Regarding claim 7, as broadly claimed, Ito shows additional ornaments (42, 160, 180) that can be attached to the strap portion (30, 131) through the connecting member or the band connector.

Regarding claim 9, as broadly claimed, the strap portion (30, 131) is provided with an end member (12, 12a, 14, 140, 150, 200) having a structure in which the additional ornaments (42, 160, 180) can be attached. Ito further shows a hole (12a, 12b) that is made in the end member to pass a ring (13).

Regarding claim 15, Ito shows a slip prevention processing that is applied to the strap portion as claimed (figure 12).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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6. Claims 2, 3, 5, 7, 9, 11, 13, 17 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshio (JP 09247782).

Regarding claims 2, 5 and 11, Yoshio teaches a headphone comprising left and right driver units (2a, 2b) that are connected by a cord (5, 6, 7). The headphone of Yoshio comprises a belt shaped strap portion (5) in which the middle part of the cord (6) is inserted into a cylindrical belt, and end members (8, 10 and 11 or 8 and 15) that fix the cord and the cylindrical belt. As shown in figures 3-5, each end member includes separate upper and lower members.

Yoshio does not specifically teach the cord passed behind a neck. However, it would have been obvious to one skilled in the art to provide the cord (5, 6, 7) passed under the chin or behind the neck for an alternate choice of the wearer.

Regarding claim 3, Yoshio shows the end members that includes the protrusions as claimed (figures 3, 4, 5).

Regarding claim 5, Yoshio shows a tube and the cylindrical belt as claimed (figures 3, 4, 5).

Regarding claim 7, as broadly claimed, Yoshio shows additional ornaments (4, figure 1) that can be attached to the strap portion (5).

Regarding claim 9, Yoshio does not specifically teach the end member (8, 8a, 8b, 15) having as structure and a hole to pass a ring as claimed. However, it would have been obvious to one skilled in the art to attach any addition ornaments at the end member of the strap portion and to provide any structure in the end member such as a hole to pass a ring for the desired purpose of decoration.

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Regarding claim 13, Yoshio does not specifically teach the strap portion provided a print or ornament. However, it would have been obvious to one skilled in the art to provide any print or ornament on the strap portion (5) for decoration.

Regarding claim 15, Yoshio shows a slip prevention processing that is applied to the strap portion as claimed (figures 3, 4, 5).

#### ***Allowable Subject Matter***

7. Claim 4 has been allowed.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claims 2, 3, 5, 7, 9, 11, 13, 15 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



HL  
September 4, 2007



HUYEN LE  
PRIMARY EXAMINER